

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND

UNITED STATES OF AMERICA,)	
)	Case No. 1:18-cv-1314
Plaintiff,)	
)	
v.)	
)	
THOMAS DEBACCO,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff United States of America, pursuant to 26 U.S.C. § 7401, with the authorization of a delegate of the Secretary of the Treasury and at the direction of a delegate of the Attorney General, brings this civil action to reduce to judgment certain unpaid federal tax liabilities of Defendant Thomas DeBacco. In support of this action, the United States alleges, as follows:

Jurisdiction, Venue, and Parties

1. Jurisdiction over this action is conferred upon this Court under 28 U.S.C. §§ 1331, 1340, and 1345, and 26 U.S.C. § 7402.

2. Defendant Thomas DeBacco resides in Cleveland, Ohio, which is within the jurisdiction of this Court.

Count to Reduce Thomas DeBacco's Tax Liabilities to Judgment

3. On the dates, in the amounts, and for the years set forth below, a delegate of the Secretary of the Treasury made assessments against Thomas DeBacco for federal income taxes, penalties, and interest, which have balances due after accounting for all payments and credits and with accruals and costs as of June 1, 2018, as follows:

Tax Period	Assessment Date	Assessment Type	Assessed Amount
2006	11/05/2007	Tax Assessed	\$110,681.00
	11/05/2007	Failure to Pre-Pay Tax Penalty	\$4,228.34
	11/05/2007	Late Payment Penalty	\$3,802.78
	11/05/2007	Interest Assessed	\$4,967.72
	06/28/2010	Late Payment Penalty	\$23,359.96
		Unpaid Balance with Interest as of 06/01/2018	\$206,221.74
2007	11/17/2008	Tax Assessed	\$147,439.00
	11/17/2008	Failure to Pre-Pay Tax Penalty	\$4,941.35
	11/17/2008	Late Payment Penalty	\$4,803.67
	11/17/2008	Interest Assessed	\$4,036.09
	06/28/2010	Late Payment Penalty	\$19,557.60
		Unpaid Balance With Interest as of 06/01/2018	\$196,274.66
2008	11/16/2009	Tax Assessed	\$152,529.00
	11/16/2009	Failure to Pre-Pay Tax Penalty	\$4,903.00
	11/16/2009	Late Payment Penalty	\$5,401.15
	11/16/2009	Interest Assessed	\$3,226.71
	06/28/2010	Late Payment Penalty	\$8,614.39
		Unpaid Balance With Interest as of 06/01/2018	\$226,849.37

2009	11/22/2010	Tax Assessed	\$144,050.00
	11/22/2010	Failure to Pre-Pay Tax Penalty	\$3,165.16
	11/22/2010	Late Payment Penalty	\$5,187.20
	11/22/2010	Interest Assessed	\$3,178.91
		Unpaid Balance With Interest as of 06/01/2018	\$209,487.10
2010	06/20/2011	Tax Assessed	\$122,067.00
	06/20/2011	Failure to Pre-Pay Tax Penalty	\$2,270.00
	06/20/2011	Late Payment Penalty	\$1,680.51
	06/20/2011	Interest Assessed	\$813.22
		Unpaid Balance With Interest as of 06/01/2018	\$174,017.22
2012	11/18/2013	Tax Assessed	\$127,405.00
	11/18/2013	Failure to Pre-Pay Tax Penalty	\$1,783.00
	11/18/2013	Late Payment Penalty	\$4,146.19
	11/18/2013	Interest Assessed	\$1,868.57
		Unpaid Balance With Interest as of 06/01/2018	\$116,190.41
Unpaid Balance with Interest as of 06/01/2018			\$1,129,040.50

4. A delegate of the Secretary of the Treasury properly gave notice of the unpaid tax described in paragraph 3, above, to Thomas DeBacco, and made a demand for payment of the balance due upon him.

5. Despite such notice and demand, Thomas DeBacco has failed, neglected, or refused to pay the liabilities set forth above in full and, after taking into account all abatements, payments, credits, costs, and accruals, Thomas DeBacco remains liable to the United States for the unpaid balance due in the amount of \$1,129,040.50, plus interest and other statutory additions from and after June 1, 2018.¹

¹ In the event that Mr. DeBacco files for bankruptcy during the pendency of this case, the United States maintains that the tax liabilities at issue in this case are excepted from discharge pursuant to 11 U.S.C. § 523(a)(1)(C).

6. This action is timely commenced under the provisions of the Internal Revenue Code as Thomas DeBacco proposed, and subsequently entered into an installment agreement with the Internal Revenue Service (“IRS”)—an agreement which was later terminated by the IRS—the effect of which was to suspend the ten-year statute of limitations for collection.

7. The statutory period of limitations was suspended and extended in regard to the income tax periods ending December 31, 2006, by an installment agreement between Thomas DeBacco and the IRS. Specifically, Thomas DeBacco proposed to enter an installment agreement with the IRS on January 17, 2014, which was under consideration by the IRS until it was approved on July 25, 2014. The installment agreement was in effect until July 10, 2017, at which time it was terminated by the IRS. As a result, the statutory periods of limitations for the 2006 tax period was extended for the period that the proposed installment agreement was under consideration by the IRS, pursuant to 26 U.S.C. § 6331(k)(2)(A), and was extended for an additional 30 days by the termination of the installment agreement by the IRS, pursuant to 26 U.S.C. § 6331(k)(2)(D).

WHEREFORE, the plaintiff United States of America prays that:

A. The Court enter judgment in favor of plaintiff United States of America and against defendant Thomas DeBacco for unpaid federal income taxes, interest, and penalties for the tax years ending December 31, 2006, December 31, 2007, December 31, 2008, December 31, 2009, December 31, 2010, and December 31, 2012, in the amount of \$1,129,040.50, plus statutory additions accruing from and after June 1, 2018, including interest pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, and 28 U.S.C. § 1961(c); and,

B. The Court award the United States of America such further relief, including the costs of this action, that the Court deem just and proper.

Respectfully submitted,

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General
U.S. Department of Justice, Tax Division

/s/ Bradley A. Sarnell
BRADLEY A. SARNELL
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55
Washington, D.C. 20044
202-307-1038 (v)
202-514-5238 (f)
Bradley.A.Sarnell@usdoj.gov

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Bradley A. Sarnell
U.S. Department of Justice, Tax Division
PO Box 55, Washington, DC 20044, (202) 307-1038

DEFENDANTS

Thomas DeBacco

County of Residence of First Listed Defendant Cuyahoga
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

26 USC 7401

Brief description of cause:

Reduce tax liabilities to judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

1,587,199.18

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

06/08/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/Bradley A. Sarnell

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

I. Civil Categories: (Please check one category only).

1. ☒ General Civil
2. ☐ Administrative Review/Social Security
3. ☐ Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action: ☐ is **RELATED** to another **PENDING** civil case ☐ is a **REFILED** case ☐ was **PREVIOUSLY REMANDED**

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule **3.8**, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY: Cuyahoga

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY:

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

☐

AKRON

(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)

☒

CLEVELAND

(Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)

☐

YOUNGSTOWN

(Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

☐

TOLEDO

(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

United States of America

Plaintiff

v.

Thomas DeBacco

Defendant

)
)
)
)
)
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)

Civil Action No. 1:18-cv-1314

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Thomas DeBacco
11008 Wade Park Avenue
Cleveland, Ohio 44106

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Bradley A. Sarnell
U.S. Department of Justice, Tax Division
PO Box 55
Washington, DC 20044
(202) 307-1038

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SANDY OPACICH, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 1:18-cv-1314

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: